

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  H1312	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>February 5, 2009</u></p> <p>Signature <u>/Christine Gillroy/</u></p> <p>Typed or printed name <u>Christine Gillroy</u></p>		Application Number  10/701,238  Filed  November 4, 2003	
		First Named Inventor  Kishore Karighattam et al.	
		Art Unit  2441	Examiner  Grant M. Ford

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

/Thomas G. Eschweiler/

Signature

assignee of record of the entire interest.

Thomas G. Eschweiler

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

Typed or printed name

attorney or agent of record.

Registration number 36,981

(216) 502-0600

Telephone number

attorney or agent acting under 37 CFR 1.34.

February 5, 2009

Registration number if acting under 37 CFR 1.34                   

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

<input type="checkbox"/>	*Total of <u>      </u> forms are submitted.
--------------------------	--

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Docket No. AMDP772US

H1312

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re **PATENT** application of:

Applicant: Kishore Karighattam, *et al.*

Application No.: 10/701,238

For: PARTIAL COALESCING OF TRANSMIT BUFFERS

Filing Date: November 4, 2003

Examiner: Grant M. Ford

Art Unit: 2441

**PRE-APPEAL BRIEF IN RESPONSE TO ADVISORY ACTION**  
**DATED JANUARY 5, 2009**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Favorable reconsideration of the above-identified application is respectfully requested in view of the following remarks.

**REMARKS**

Claims 1, 2, and 8-12 are currently pending in the application. Reconsideration of the application in light of the following remarks is respectfully requested.

**I. REJECTION OF CLAIMS 1, 2, AND 8-12 UNDER 35 U.S.C. § 102(e)**

Claims 1, 2, and 8-12 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,185,438 (Fox). Withdrawal of the rejection is respectfully requested for at least the following reasons.

- i. **Fox do not teach a data packet located in an array of virtual buffers that each map to one or more physical buffers in a system memory, as recited in claim 1.**

Claim 1 of the present invention relates to a method for partial coalescing transmit buffers, which comprises obtaining a data packet from host software, wherein the data packet is located in an array of virtual buffers that each map to one or more physical buffers in a system memory. Contrary to the assertion of the Final Office Action (F.O.A.) dated October 3, 2008, Fox fails to teach obtaining a data packet from host software, where the data packet is located in an array of virtual buffers that each map to one or more physical buffers in a system memory.

Fox teaches a communication processor that uses a group of hardware buffer descriptors and a virtual array of buffer descriptors to control the communication ports of the communication processor. (See, e.g., Abstract). The virtual array of buffer descriptors, of Fox, **store status and control information about the communication ports and the data being communicated, but do not store the communicated data.** (See, e.g., Col. 1, line 58-Col. 2, line 3). This fact is further reiterated by Fox teaching that the status and control information includes: 1) the starting address of the data buffer holding the needed data, 2) the length of the data in the data buffer, and 3) bits that may be used to activate and deactivate the digital processor or to indicate certain conditions, including errors. (See, e.g., Col 1, line 64-Col 2, line 4). **The actual transmit and receive data of Fox is stored in transmit data buffer 350 and receive data buffer 360 in RAM 215.** (See, e.g., Col. 6, lines 57-59). Therefore the cited art of Fox fails to teach or suggest the invention of claim 1. Consequently Fox does not anticipate the invention of claim 1 and its associated depending claims.

ii. **The advisory action incorrectly associates the term “data packet” to status and control information about the communication ports and the data being communicated.**

The Advisory Action (AA) asserts the definition of data packet, as referenced from the Microsoft Computer Dictionary respective to the referred noun “packet”, gives the word two definitions where the primary definition has a broader definition than the latter. (See, e.g., AA, Page 2). Because the primary definition of packet applies with respect to the prior art Fox when provided the broadest reasonable interpretation, as

asserted by the AA, the AA suggests the prior art of Fox still anticipates the invention of claim 1. Applicant respectfully disagrees with this assertion and offers this analysis in response.

The referenced primary definition, as averred by the AA, provides that "a packet is a **unit of information transmitted as a whole from one device to another on a network**". (See, e.g., AA, Page 2). In view of the prior art Fox, the virtual array of buffer descriptors and the status and control information about the communication ports being stored does not meet the limitations of the definition of packet, as provided by the AA. The descriptors in the virtual array of buffer descriptors are not being "**transmitted as a whole from one device to another on a network**" as is asserted by the AA. At most the virtual array of buffers descriptors provide **parts of the whole data packet**, but do not provide the whole data packet in its entirety, **thus not constituting a packet** as suggested by the AA. Accordingly, because the status and control information of Fox is not "a unit of information transmitted as a whole from one device to another one a network", as defined by the Microsoft Computer Dictionary and the AA, Fox does not anticipate the invention of claim 1 of the application or subsequent dependent claims.

**iii. Fox itself teaches a distinction between a data packet and status/control information about the communication ports and the data being communicated.**

Fox further teaches and uses the term data packet, thus drawing a clear distinction between a descriptor located in the virtual array of descriptors and actual transmit and receive data stored in transmit data buffer 350 and receive data buffer 360 in RAM 215. This distinction is clarified when Fox teaches, "If the transmitter buffer descriptors of a digital processor are filled, when additional **data packets are available for processing and transmission**, the additional packet processing must wait until a transmitter buffer descriptor becomes available to store them". (See, e.g., Col. 2, lines 11-15). It is to be noted that the term "them", as taught by Fox, is referring to the stored status and control information about the communication ports and the data (i.e., in this instance the data packets) being communicated. Fox's use of data packet and packet,

as provided above, and thus the definition of packet used by the AA in interpreting Fox is actually inconsistent with Fox itself. Therefore the portions of Fox cited by the AA in rejecting the pending claims, do not anticipate the claimed invention.

The Final Office Action asserts that Fox discloses a method comprising obtaining a data packet from host software, wherein the data packet is located in an array of virtual buffers that each map to one or more physical buffers in a system memory, with reference to Fox, Col. 2, lines 49-60, Col. 7, lines 16-27 and 40-51. (See, e.g., F.O.A., Page 3). This reference of Fox teaches a virtual array of buffer descriptors (VABD) that are logically subdivided into virtual transmit buffer descriptors table (VTBDn) and virtual receive buffer descriptors table (VRBDm), where "n" and "m" are indexes. Each VTBD1-VTBDn points to a location in transmit data buffer 350 ***where outbound data are stored*** and each VRBD1-VRBDn points to a location in receive data buffer 360 where ***inbound data are to be stored***. This reference of Fox does not provide placement of ***the inbound/outbound data located in an array of virtual buffers***.

In light of the preceding arguments, it is concluded from the teachings of Fox that ***a data packet is never stored in an array of virtual buffers***, but is stored in data buffers 350 and 360. The only data stored in the virtual array of buffer descriptors of Fox is ***status and control information*** about the communication ports and the data being communicated, not data packets as is recited in claim 1 of applicant. Therefore independent claim 1 along with respective depending claims 2 and 8-12 are believed not anticipated by Fox and thus allowable. Accordingly withdrawal of the rejection is respectfully requested.

**II. CONCLUSION**

Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should any fees be due as a result of the filing of this response, the Commissioner is hereby authorized to charge the Deposit Account Number 50-1733, AMDP772US.

Respectfully submitted,  
ESCHWEILER & ASSOCIATES, LLC

By /Thomas G. Eschweiler/  
Thomas G. Eschweiler  
Reg. No. 36,981

National City Bank Building  
629 Euclid Avenue, Suite 1000  
Cleveland, Ohio 44114  
(216) 502-0600